



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

May 26, 2005

TOM CORBETT  
ATTORNEY GENERAL

Appeals and Legal Services Section  
16<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 783-6273

James Anderson  
Assistant Federal Public Defender  
Capital Habeas Corpus Unit  
1450 Liberty Center  
1001 Liberty Avenue  
Pittsburgh, PA 15222-3714

**Re:** Breakiron v. Horn et al.  
Civil Action No. 00-300

Dear Mr. Anderson:

The enclosed documents are being provided to you pursuant to requests 1-3, 5-7, 9-10, 12-13, 16, and 18-19 of your Request for Production of Documents dated March 18, 2005. With the exception of documents that have already been filed in the courts, and documents identified below that are being withheld pursuant to Fed.R.Civ.P. 26(b)(3), the enclosed documents represent all of the documents in the possession of the Office of Attorney General that are responsive to requests 1-3, 5-7, 9-10, 12-13, 16, and 18-19, to the best of my knowledge, information, and belief.

I have also requested that the Fayette County District Attorney's Office provide me with all of the documents in their possession that are responsive to requests 1-3, 5-7, 9-10, 12-13, 16, and 18-19. I spoke to ADA Pamela Johnston about this on March 31, 2005. I also spoke to Alexis, the Office Manager for the DA's Office, on April 21, 2005. As soon as I receive these documents, I will let you know.

In compliance with Fed.R.Civ.P. 26(b)(5), you are hereby advised that respondents are withholding the following categories of documents prepared by the prosecutor(s) that are protected from disclosure pursuant to Fed.R.Civ.P. 26(b)(3) (relating to trial preparation materials):



- (1) Proposed questions for the witnesses, and notes of the main purpose of each witness;
- (2) Proposed questions for use during jury selection;
- (3) Outline of points the prosecutor wanted to make during his opening statement, closing argument, and for argument on motions;
- (4) Notes regarding proposed points for charge;
- (5) To do lists;
- (6) Notes describing the law and the prosecutor's opinions about the law;
- (7) Exhibits to be admitted, the sponsoring witness for each exhibit, and the main purpose for each exhibit;
- (8) Lists of prospective trial jurors annotated with notes by the prosecutor;
- (9) Various witness lists, some of which contain personal information such as the home address and telephone number of the witnesses;
- (10) Speedy trial rule calculations; and
- (11) Brief legal evaluation of statutory mitigating circumstances and whether they were applicable during the penalty phase.

Of the eleven categories of documents identified above, categories 1-3, 5, and 9 contain references to Ellis Price. The remaining categories do not. I am especially concerned with category #9 to the extent that it contains personal information about the witnesses. I see no need to produce this personal information, and will seek a protective order if necessary to protect the security of these individuals.

Recently, your co-counsel Stuart Lev informed me that you will be issuing subpoenas to the Pennsylvania State Police and the Fayette County Jail for documents. Pursuant to Fed.R.Civ.P. 45(b)(1), please provide me with prior notice and a copy of all subpoenas so that I may evaluate whether they are within the scope of Judge Standish's Order permitting discovery.

If you intend to present any motions during our upcoming status conference scheduled for June 3, 2005, please provide me with as much advance notice as possible.

If you have any questions or concerns, please contact me.

Very truly yours,

CHRISTOPHER D. CARUSONE  
Deputy Attorney General

CDC\rkt

Enclosures

cc: Stuart Lev, Esquire (w/o enclosures)